

108TH CONGRESS
1ST SESSION

S. 779

To amend the Federal Water Pollution Control Act to improve protection of treatment works from terrorist and other harmful intentional acts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 2003

Mr. JEFFORDS (for himself, Mr. LAUTENBERG, Mr. GRAHAM of Florida, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to improve protection of treatment works from terrorist and other harmful intentional acts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wastewater Treatment
5 Works Security and Safety Act”.

1 **SEC. 2. PROTECTION FROM TERRORIST AND OTHER HARM-**
 2 **FUL INTENTIONAL ACTS.**

3 Title II of the Federal Water Pollution Control Act
 4 (33 U.S.C. 1281 et seq.) is amended by adding at the end
 5 the following:

6 **“SEC. 222. PROTECTION FROM TERRORIST AND OTHER**
 7 **HARMFUL INTENTIONAL ACTS.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) COVERED TREATMENT WORKS.—

10 “(A) IN GENERAL.—The term ‘covered
 11 treatment works’ means a treatment works
 12 that—

13 “(i) serves at least 25,000 individuals;

14 or

15 “(ii) as determined by the Adminis-
 16 trator before October 1, 2003, based on
 17 the factors described in subparagraph (B),
 18 presents a sufficient security risk to re-
 19 main subject to this section.

20 “(B) FACTORS FOR INCLUSION OF TREAT-
 21 MENT WORKS.—The factors referred to in sub-
 22 paragraph (A)(ii) are—

23 “(i) the likelihood that the treatment
 24 works will be the target of a harmful inten-
 25 tional act;

1 “(ii) the consequences that would re-
 2 sult if the treatment works were the target
 3 of a harmful intentional act; and

4 “(iii) such other security factors as
 5 the Administrator determines to be nec-
 6 essary to protect—

7 “(I) public health, safety, and
 8 welfare;

9 “(II) critical infrastructure; and

10 “(III) national security.

11 “(2) EMERGENCY RESPONSE PLAN.—The term
 12 ‘emergency response plan’ means a plan that a cov-
 13 ered treatment works is required to prepare or re-
 14 vise, and submit to the Administrator, under sub-
 15 section (c).

16 “(3) HARMFUL INTENTIONAL ACT.—The term
 17 ‘harmful intentional act’ means a terrorist attack or
 18 other intentional act carried out with respect to a
 19 covered treatment works that is intended—

20 “(A) to substantially disrupt the ability of
 21 the covered treatment works to provide safe and
 22 reliable—

23 “(i) conveyance and treatment of
 24 wastewater;

25 “(ii) disposal of effluent; or

1 “(iii) storage of a potentially haz-
 2 ardous chemical used to treat wastewater;
 3 “(B) to damage critical infrastructure;
 4 “(C) to have an adverse effect on the envi-
 5 ronment; or
 6 “(D) to otherwise pose a significant threat
 7 to public health or safety.

8 “(4) VULNERABILITY ASSESSMENT.—The term
 9 ‘vulnerability assessment’ means an assessment that
 10 a covered treatment works is required to conduct
 11 and submit to the Administrator under subsection
 12 (b)(1).

13 “(b) VULNERABILITY ASSESSMENTS.—

14 “(1) COVERED TREATMENT WORKS.—

15 “(A) IN GENERAL.—Using appropriate
 16 tools (such as available vulnerability self-assess-
 17 ment tools), each covered treatment works shall
 18 conduct and submit to the Administrator an as-
 19 sessment of the vulnerability of the covered
 20 treatment works to a harmful intentional act.

21 “(B) DEADLINE FOR SUBMISSION.—Each
 22 covered treatment works shall submit a vulner-
 23 ability assessment to the Administrator—

1 “(i) in the case of a covered treatment
2 works described in subsection (a)(1)(A)(i),
3 by not later than April 1, 2004; and

4 “(ii) in the case of the covered treat-
5 ment works described in subsection
6 (a)(1)(A)(ii), by such date as shall be de-
7 termined by the Administrator, but not
8 later than December 1, 2004.

9 “(2) REQUIRED ELEMENTS.—At a minimum,
10 the vulnerability assessment shall consist of a review
11 of—

12 “(A) the pipes and constructed convey-
13 ances, physical barriers, treatment, storage, and
14 disposal facilities, and electronic, computer, and
15 other automated systems, that are used by the
16 covered treatment works;

17 “(B) the use, storage, or handling of var-
18 ious chemicals at the covered treatment works;

19 “(C) plans and procedures of the covered
20 treatment works, to ensure, to the maximum
21 extent practicable, continued provision of serv-
22 ice; and

23 “(D) critical records and documents of the
24 covered treatment works.

25 “(c) EMERGENCY RESPONSE PLAN.—

1 “(1) IN GENERAL.—Not later than 180 days
 2 after a covered treatment works completes a vulner-
 3 ability assessment in accordance with subsection (b),
 4 the covered treatment works shall prepare or revise,
 5 as necessary, and submit to the Administrator, an
 6 emergency response plan that incorporates the re-
 7 sults of the vulnerability assessment.

8 “(2) REQUIRED ELEMENTS.—The emergency
 9 response plan shall include plans, procedures, identi-
 10 fication of equipment, and other activities that
 11 can—

12 “(A) be implemented or used in the event
 13 of a harmful intentional act carried out with re-
 14 spect to the covered treatment works; and

15 “(B) reduce or significantly lessen the im-
 16 pacts of a harmful intentional act carried out
 17 with respect to the covered treatment works.

18 “(3) COORDINATION WITH LOCAL EMERGENCY
 19 PLANS.—In preparing or revising emergency re-
 20 sponse plans under this subsection, a covered treat-
 21 ment works shall, to the maximum extent prac-
 22 ticable, coordinate with local emergency plans.

23 “(4) RECORD MAINTENANCE.—Each covered
 24 treatment works shall maintain a copy of the emer-
 25 gency response plan prepared or revised under para-

1 graph (1), and any additional revisions to such a
2 plan completed after the date referred to in para-
3 graph (1), for a period of not less than 5 years after
4 the date on which the plan or revisions are sub-
5 mitted to the Administrator.

6 “(d) REQUIREMENTS RELATING TO VULNERABILITY
7 ASSESSMENTS AND EMERGENCY RESPONSE PLANS.—

8 “(1) PROVISION OF VULNERABILITY ASSESS-
9 MENTS TO STATE AND LOCAL GOVERNMENTS.—No
10 covered treatment works shall be required under
11 State or local law to provide a vulnerability assess-
12 ment or emergency response plan to any State, re-
13 gional, or local governmental entity unless the State
14 or local government has in effect a law that requires
15 submission of such an assessment or plan to the
16 State, regional, or local governmental entity.

17 “(2) EXEMPTION OF INFORMATION FROM DIS-
18 CLOSURE.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), all information provided to
21 the Administrator under subsections (b) and
22 (c), and all information derived from that infor-
23 mation, shall be exempt from disclosure under
24 section 552 of title 5, United States Code.

1 “(B) NO EXCEPTION.—Subparagraph (A)
 2 does not apply to information contained in a
 3 vulnerability assessment or emergency response
 4 plan that identifies—

5 “(i) the covered treatment works sub-
 6 mitting the vulnerability assessment or
 7 emergency response plan; or

8 “(ii) the date of completion of the vul-
 9 nerability assessment or emergency re-
 10 sponse plan.

11 “(3) PROTOCOLS TO PROTECT VULNERABILITY
 12 ASSESSMENTS AND EMERGENCY RESPONSE PLANS
 13 FROM UNAUTHORIZED DISCLOSURE.—

14 “(A) IN GENERAL.—Not later than April
 15 1, 2004, the Administrator, in consultation with
 16 appropriate Federal law enforcement and intel-
 17 ligence officials, shall develop such protocols as
 18 are necessary to protect vulnerability assess-
 19 ments and emergency response plans from un-
 20 authorized disclosure.

21 “(B) PROTOCOLS.—The protocols shall en-
 22 sure that—

23 “(i) each copy of a vulnerability as-
 24 sessment or emergency response plan, and
 25 all information contained in or derived

1 from the vulnerability assessment or emer-
2 gency response plan, is kept in a secure lo-
3 cation;

4 “(ii) only individuals designated by
5 the Administrator have access to the copies
6 of the vulnerability assessments and emer-
7 gency response plans; and

8 “(iii) no copy of a vulnerability assess-
9 ment or emergency response plan is avail-
10 able to any individual other than an indi-
11 vidual designated by the Administrator
12 under clause (ii).

13 “(C) EXCEPTIONS.—Any individual re-
14 ferred to in subparagraph (B)(ii)—

15 “(i) may disclose a copy of a vulner-
16 ability assessment or emergency response
17 plan—

18 “(I) to any individual designated
19 by the Administrator under paragraph
20 (3)(B)(ii); or

21 “(II) for use under seal in any
22 administrative or judicial proceeding
23 relating to imposition of a penalty for
24 failure to comply with this section; or

1 “(ii) if the individual is an officer or
2 employee of the United States, may discuss
3 the contents of a vulnerability assessment
4 or emergency response plan with a State or
5 local official who the Administrator deter-
6 mines needs to know those contents.

7 “(4) RECORDKEEPING; ENTRY.—

8 “(A) RECORDKEEPING.—A covered treat-
9 ment works that is required to submit to the
10 Administrator information under subsection (b)
11 or (c) shall maintain on the premises of the
12 treatment works a current copy of that infor-
13 mation.

14 “(B) ENTRY.—In carrying out this section,
15 the Administrator (or an authorized representa-
16 tive of the Administrator), on presentation of
17 credentials—

18 “(i) shall have a right of entry to, on,
19 or through any premises of an owner or
20 operator of a covered treatment works, or
21 any premises on which any records re-
22 quired to be maintained under subpara-
23 graph (A) are located; and

24 “(ii) may at reasonable times have ac-
25 cess to, and may copy, any records, re-

1 ports, or other information described in
2 subparagraph (A).

3 “(5) 5-YEAR REVIEW.—Not later than 5 years
4 after the date of submission of an emergency re-
5 sponse plan by a covered treatment works under
6 subsection (c), and not less often than every 3 years
7 thereafter, the owner or operator of the covered
8 treatment works, in coordination with local law en-
9 forcement and first responders, shall—

10 “(A) review the adequacy of the emergency
11 response plan; and

12 “(B)(i) certify to the Administrator that
13 the covered treatment works has implemented
14 the emergency response plan; and

15 “(ii) as appropriate, submit to the Admin-
16 istrator any changes to the emergency response
17 plan.

18 “(6) PROVISION OF INFORMATION TO CON-
19 GRESS.—Nothing in this subsection authorizes any
20 person to withhold any information from Congress
21 or from any committee or subcommittee of Congress.

22 “(e) ABATEMENT ACTION.—

23 “(1) IN GENERAL.—If the Administrator, in
24 consultation with local law enforcement officials and
25 first responders, determines that a threat of a ter-

1 rorist attack exists that is beyond the scope of a
2 submitted emergency response plan, or that current
3 implementation of an emergency response plan is in-
4 sufficient to address the results of an assessment of
5 a treatment works or the threat of a harmful inten-
6 tional act, the Administrator shall notify each treat-
7 ment works of the elevated threat.

8 “(2) INSUFFICIENT RESPONSE.—If the Admin-
9 istrator determines that a treatment works has not
10 taken appropriate action in response to a notifica-
11 tion under paragraph (1), the Administrator shall
12 notify the treatment works and the Attorney General
13 that actions taken by the treatment works in re-
14 sponse to the notification are insufficient.

15 “(3) RELIEF.—

16 “(A) IN GENERAL.—On submission of a
17 notification under paragraph (2), the Adminis-
18 trator or the Attorney General may secure such
19 relief as is necessary to abate a threat described
20 in paragraph (1), including such orders as are
21 necessary to protect public health or welfare.

22 “(B) JURISDICTION.—The district court of
23 the United States for the district in which a
24 threat described in paragraph (1) occurs shall
25 have jurisdiction to grant such relief as the Ad-

1 administrator or Attorney General requests under
2 subparagraph (A).

3 “(f) GRANTS FOR COMPLIANCE AND BASIC SECURITY
4 ENHANCEMENTS.—

5 “(1) IN GENERAL.—The Administrator, in co-
6 ordination with State and local governments, may
7 make grants to covered treatment works—

8 “(A) to assist in compliance with sub-
9 sections (b) and (c); and

10 “(B) to pay the costs of implementing
11 basic security enhancements of critical impor-
12 tance, and otherwise addressing significant
13 threats of harmful intentional acts, identified
14 under a vulnerability assessment.

15 “(2) TYPES OF BASIC SECURITY ENHANCE-
16 MENTS.—The basic security enhancements referred
17 to in paragraph (1)(B) are—

18 “(A) purchase and installation of equip-
19 ment for detection of intruders;

20 “(B) purchase and installation of fencing,
21 gating, lighting, or security cameras;

22 “(C) tamperproofing of manhole covers
23 and valve boxes;

24 “(D) rekeying of doors and locks;

1 “(E) improvements to electronic, computer,
2 and other automated systems and remote secu-
3 rity systems;

4 “(F) participation in training programs,
5 and purchase of training manuals and guidance
6 materials, relating to security against harmful
7 intentional acts;

8 “(G) improvements in the use, storage, or
9 handling of chemicals;

10 “(H) security screening of employees of
11 the covered treatment works or employees of
12 contractor support services; and

13 “(I) such other equipment and activities as
14 the Administrator determines to be appropriate.

15 “(3) PROHIBITED EXPENDITURES.—The basic
16 security enhancements referred to in paragraph
17 (1)(B) do not include expenditures for—

18 “(A) personnel costs; or

19 “(B) monitoring, operation, or mainte-
20 nance of facilities, equipment, or systems.

21 “(g) GRANTS TO ADDRESS IMMEDIATE AND URGENT
22 SECURITY NEEDS.—The Administrator may make grants
23 to covered treatment works to assist in responding to and
24 alleviating any vulnerability to a harmful intentional act

1 that the Administrator determines presents an immediate
 2 and urgent security need.

3 “(h) ASSISTANCE TO SMALL COVERED TREATMENT
 4 WORKS.—

5 “(1) GUIDANCE.—The Administrator shall pro-
 6 vide guidance to covered treatment works serving a
 7 population of fewer than 10,000 individuals on
 8 how—

9 “(A) to conduct vulnerability assessments;

10 “(B) to prepare emergency response plans;

11 and

12 “(C) to address threats posed by harmful
 13 intentional acts.

14 “(2) GRANTS.—The Administrator may make
 15 grants to covered treatment works described in para-
 16 graph (1) to carry out activities in accordance with
 17 the guidance provided under paragraph (1).

18 “(i) AUTHORIZATION OF APPROPRIATIONS.—There is
 19 authorized to be appropriated to carry out this section
 20 \$180,000,000 for the period of fiscal years 2004 through
 21 2008, of which not more than—

22 “(1) \$125,000,000 for fiscal year 2004, and
 23 such sums as are necessary for each of fiscal years
 24 2005 through 2008, may be used to carry out sub-
 25 section (f);

1 “(2) \$20,000,000 for the period of fiscal years
2 2004 and 2005 may be used to carry out subsection
3 (g); and

4 “(3) \$15,000,000 for fiscal year 2004 and such
5 sums as are necessary for each of fiscal years 2005
6 through 2008, may be used to carry out subsection
7 (h)(2).”.

8 **SEC. 3. RESEARCH AND REVIEW.**

9 Title II of the Federal Water Pollution Control Act
10 (33 U.S.C. 1281 et seq.) (as amended by section 2) is
11 amended by adding at the end the following:

12 **“SEC. 223. RESEARCH AND REVIEW.**

13 “(a) DEFINITIONS.—In this section, the terms ‘cov-
14 ered treatment works’ and ‘harmful intentional act’ have
15 the meanings given the terms in section 222(a).

16 “(b) REVIEW BY ADMINISTRATOR.—Not later than
17 2 years after the date of enactment of this section, the
18 Administrator, in coordination with appropriate Federal
19 agencies, shall research and review (or enter into a con-
20 tract or cooperative agreement to provide for research and
21 review of)—

22 “(1) means by which terrorists or other individ-
23 uals or groups could carry out harmful intentional
24 acts; and

1 “(2) means by which alternative processes of
 2 conveying, treating, and disposing of wastewater
 3 could be provided in the event of the destruction, im-
 4 pairment, or disruption of covered treatment works
 5 as the result of harmful intentional acts.

6 “(c) MEANS OF CARRYING OUT HARMFUL INTEN-
 7 TIONAL ACTS.—Means referred to in subsection (b)(1) in-
 8 clude—

9 “(1) means by which pipes and other con-
 10 structed conveyances used in covered treatment
 11 works could be destroyed or otherwise prevented
 12 from providing adequate conveyance, pretreatment,
 13 treatment, and disposal of wastewater meeting appli-
 14 cable public health standards;

15 “(2) means by which conveyance, pretreatment,
 16 treatment, storage, and disposal facilities used by, or
 17 in connection with, covered treatment works could be
 18 destroyed or otherwise prevented from providing
 19 adequate treatment of wastewater meeting applicable
 20 public health standards;

21 “(3) means by which pipes, constructed convey-
 22 ances, pretreatment, treatment, storage, and dis-
 23 posal systems that are used in connection with treat-
 24 ment works could be altered or affected so as to

1 pose a threat to public health, public safety, or the
2 environment;

3 “(4) means by which pipes, constructed convey-
4 ances, pretreatment, treatment, storage, and dis-
5 posal systems that are used in connection with cov-
6 ered treatment works could be reasonably protected
7 from harmful intentional acts;

8 “(5) means by which pipes, constructed convey-
9 ances, pretreatment, treatment, storage, and dis-
10 posal systems could be reasonably secured from use
11 as a means of transportation by terrorists or other
12 individuals or groups who intend to threaten public
13 health or safety; and

14 “(6) means by which information systems, in-
15 cluding process controls and supervisory control,
16 data acquisition, and cyber systems, at covered
17 treatment works could be disrupted by terrorists or
18 other individuals or groups.

19 “(d) CONSIDERATIONS.—In carrying out the review
20 under this section, the Administrator—

21 “(1) shall ensure that the review reflects the
22 needs of covered treatment works of various sizes
23 and various geographic areas of the United States;
24 and

1 “(2) may consider the vulnerability of, or poten-
 2 tial for forced interruption of service for, a region or
 3 service area, including the National Capital Area.

4 “(e) INFORMATION SHARING.—As soon as prac-
 5 ticable after the review carried out under this section has
 6 been evaluated by the Administrator, the Administrator
 7 shall disseminate to covered treatment works information
 8 on the results of the review through the Information Shar-
 9 ing and Analysis Center or other appropriate means.

10 “(f) FUNDING.—There is authorized to be appro-
 11 priated to carry out this section \$15,000,000 for the pe-
 12 riod of fiscal years 2004 through 2008.”.

13 **SEC. 4. REFINEMENT OF VULNERABILITY ASSESSMENT**
 14 **TOOLS FOR PUBLICLY OWNED TREATMENT**
 15 **WORKS.**

16 Title II of the Federal Water Pollution Control Act
 17 (33 U.S.C. 1281 et seq.) (as amended by section 3) is
 18 amended by adding at the end the following:

19 **“SEC. 224. REFINEMENT OF VULNERABILITY ASSESSMENT**
 20 **TOOLS FOR PUBLICLY OWNED TREATMENT**
 21 **WORKS.**

22 “(a) GRANTS.—The Administrator may make grants
 23 to 1 or more nonprofit organizations for the improvement
 24 of vulnerability self-assessment tools for publicly owned
 25 treatment works.

1 “(b) ELIGIBLE ACTIVITIES.—

2 “(1) IN GENERAL.—Grants provided under this
3 section may be used for—

4 “(A) developing and distributing vulner-
5 ability self-assessment software upgrades;

6 “(B) improving and enhancing critical
7 technical and user support functions;

8 “(C) expanding libraries of information ad-
9 dressing both threats and countermeasures; and

10 “(D) implementing user training initia-
11 tives.

12 “(2) SERVICES.—Services described in para-
13 graph (1) shall be provided at no cost to recipients.

14 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
15 is authorized to be appropriated to carry out this section
16 \$500,000 for each of fiscal years 2004 through 2008, to
17 remain available until expended.”.

○